EX PARTE OR LATE FILED

DSSA

310 NORTH MILWAUKEE AVE.
LAKE VILLA, IL 60046
(847)356-7800 • FAX (847)356-8791

May 5, 1999

RECEIVED
MAY 6 1999
FCC MAIL ROOM

VIA FEDERAL EXPRESS

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 Twelfth St., SW Rm. TW-A 325
Washington, D.C. 20554

RE: **SBC Communications Inc., and Ameritech Corporation**
(CC Dkt. No. 98-141)

Dear Ms. Salas:

In accordance with the Ex-parte Submission, I am forwarding a copy of the oral argument I made yesterday, May 4, 1999 before the Illinois Commerce Commissions office.

Thank you for considering these materials. I would be happy to discuss these materials and suggestions more fully at your convenience. Please feel free to contact me at (847) 356-7800 or by email (DSSA310@aol.com).

Sincerely,

Don S. Samuelson sc

Don S. Samuelson

DSS/sc

Enc.

cc: Thomas Krattenmaker
Robert Atkinson
Bill Dever

No. of Copies rec'd 0
List ABCDE

Illinois Commerce Commission Oral Argument
Tuesday, May 4, 1999
Hearing Room, 160 N. LaSalle St.
Oral Argument of Don Samuelson

Introduction:

My name is Don Samuelson. I am representing DSSA and the Neighborhood Learning Networks. I am not being paid to be here by an employer. I am not being paid to be here by a client. I am here because no one else -- not the Joint Applicants, not the Government and Consumer Intervenors, not the ICC Staff -- has been sufficiently concerned about the impact of this merger on the interests of the "disadvantaged" and "underserved" markets of the State of Illinois.

Who are these disadvantaged and underserved markets?

1. the elderly, particularly the poor elderly;
2. the less educated;
3. the poor;
4. non-English speakers;
5. the immigrants;
6. the handicapped;
7. those without phone service; and
8. the residents of inner city and rural markets.

In California, the Pac Tel/SBC merger was conditioned on the creation of a California Community Partnership to determine and meet the needs of "disadvantage" and "underserved" markets in California. In Ohio, Ameritech/SBC made commitments: a. to create a Community Technology Fund to support technology access projects and community technology centers; b. to substantially expand the Universal Service Assistance Program; and c. to assure that broadband access is rolled out "equitably" in Ohio, as an "anti-redlining" initiative. Despite these initiatives by the Joint Applicants elsewhere, there are no similar commitments or programs on the table here in Illinois.

I've been joined in this effort by major Chicago-wide organizations that support our efforts. These include: the Central Advisory Committee of the CHA, the Chicago Workshop on Economic Development, the Center for Neighborhood Technology, the South Austin Coalition, the Information Technology Resource Center, the Policy Research Action Group, and a number of other groups and coalitions who have representatives in this room today. These groups are in the process of organizing other groups throughout the State to join them in reviewing these proceedings. These groups are concerned that no one appears to be taking their needs seriously. Collectively, groups of this type represent between 40% and 50% of the adult residents of the State of Illinois.

Markets:

The Joint Applicants have the burden of showing that the proposed merger is NOT LIKELY to have a "SIGNIFICANT ADVERSE EFFECT" on various consumer markets in Illinois. They have not argued that the groups we represent are NOT markets. And they have introduced NO EVIDENCE as to how these markets will be effected by the proposed merger. They have clearly not met their burden of proof required under Section 7-204(d).

Instead, we believe there are a variety of reasons why this proposed merger as proposed WILL HAVE an adverse effect on these markets:

1. The Joint Applicants will need to generate revenue to meet the earning and dividend expectations of their investors, and non-competitive residential markets, rather than the competitive business markets, are the easiest place to generate additional earnings and revenues, by adding new services or reclassifying existing regulated services as "competitive."
2. Significant portions of this market are vulnerable to aggressive and perhaps misleading telemarketing efforts, like those introduced as "best practices" by SBC into California.
3. Programs to promote universal service will not be promoted; Illinois is presently one of the five worst states in the country in the provision of basic phone service.
4. It will be difficult for the needs of these markets to be heard in Texas; it has been difficult enough being heard in Illinois.
5. New technologies, like digital subscriber lines, will come to these markets last, if at all.

Competition and the Need for an Illinois 271 Solution:

The "disadvantaged" and "underserved" markets we represent need the benefits of competition. Meaning alternative suppliers. Who can compete for customers with meaningful information about price, features and service. The long distance market in Illinois seems competitive. Business customers have alternative suppliers. The problem is in the local exchange markets, for residential customers, and particularly, for disadvantaged and underserved markets. These markets need multiple suppliers competing for their business, not a one-supplier monopoly.

The FCC developed a process – the 271 checklist – which with compliance would result in competitive marketplaces for telecom services. We learned on Friday that SBC had just satisfied the 271 checklist in Texas. We learned on Monday that Ameritech had met 10 of the 14 checklist items in Illinois, but then decided not to continue the process. Ameritech has represented that it had the capacity to comply with the remaining items on the checklist, with the possible exception of "common transport." This Commission should be sure that a "fail safe" process for creating a competitive marketplace is in place in Illinois before this merger is approved.

What should be done? The Commission should propose detailed questions to the Joint Applicants to make sure the Commission understands to its satisfaction the circumstances of Ameritech's 271 application in Illinois, the SBC 271 application in Texas, the competition-promoting discussions of SBC with the FCC (including reference to the 271 checklist) and the time requirements, technical capability and general requirements for meeting some Illinois version of Section 271 so that the Commission is assured that the benefits of competition will result from the approval of this merger. We don't need a collaborative process. We need more clear and meaningful information from the Joint Applicants. That would be in the public interest.

The Commission should request this information and extend its decision making deadline accordingly under Section 7-204(d). The creation of an Illinois version of Section 271 may be a remedy that would solve some, many or all of the competition issues that have been raised in these proceedings. We need to get all of the relevant Section 271 facts on the table, within a logical analytical framework, to help the Commission reach a correct decision in this matter.

Savings:

It was clear from yesterday's discussion that there was considerable confusion on the issue of savings. Why were savings a relevant issue? Could there be savings available to ratepayers in a price cap alt/reg plan? Were savings only reductions in costs? Could new revenues be savings? Could synergies be savings? Were the savings 31 million? Or were they 90 million? Or $343 million a year for 10 years? Were the one-time "costs" of $67 million for transaction costs, or for costs to generate the $90 million in savings? Why do the savings only occur in the first three years? How does the Commission draft a "scope of work" with an auditor to determine what savings have been? How do "best practices" figure into this mix?

First, I would like to offer two justifications for the allocation of savings. First, for most of Ameritech's long history, it was a regulated monopoly, a "rate-of-return" company. A great deal of its current marketplace value was created during times when its returns were virtually guaranteed. The current value of Ameritech was not created out of an entirely competitive marketplace. Therefore, it is "fair" to allocate some of the value of the merger to ratepayers.

Second, there will be a "lag" between the time that savings are realized by the Joint Applicants and the time that ratepayers realize the benefits of competition in the marketplace. The merger savings – not the operating efficiencies of the alt/reg deal – can be used to compensate ratepayers for the lack of competition benefits during this time period.

Who should receive the savings? The markets that are not receiving the benefits of a competitive marketplace. Not the long distance markets. Not the large business customers. They are experiencing the benefits of a competitive marketplace now. The markets that should be "compensated" through savings are the local exchange markets, residential ratepayers and the "disadvantaged" and "underserved" markets, the markets where there is a lag in receiving the benefits of competition.

This is an area where the Joint Applicants have the BURDEN of providing clear and meaningful information. They should be asked to set out their categories of savings – by line item – with the time period over which the savings will be realized, and the total amount of the savings.

Unfortunately, the Commission currently does not have access to the information, in an understandable format, with which to make either a determination or allocation of savings. Postponing into the future the hard thinking required for a reasoned decision in this area is not a responsible position to take. Fortunately, through Section 7-204(d), the Commission can order the Joint Applicants to produce a detailed and understandable projection of future savings, reconciled to SBC representations to the business and financial communities, so that the Commission is comfortable that it is not "giving away the store."

It is important to note that application of the 8.77% portion of the Ameritech regulated services to the $1.2 billion annual savings projected by Chairman Whitacre results in savings of about $100 million a year. If the average time period for the savings occurs over 5 and a half years, as in California, that would amount to $550 million in savings, as compared to the $30 million over three years proposed as recently as yesterday by the Joint Applicants.

The Illinois Community Technology Fund:

Our basic position throughout these proceedings is that the Commission should condition the merger on a set of structural initiatives, funded by merger savings, to assist disadvantaged and underserved markets. These initiatives, modeled after the California and Ohio programs, were discussed in Neighborhood Learning Network's testimony and briefs (Neighborhood Learning Network's Reply at pages 13-20, Exceptions to Proposed Order at pages 11-15), and would be created and managed through an Illinois Community Technology fund.

There is a large volume of growing literature on the human capital and productivity implications of a "digital divide," the significant and growing disparity between technology "halves" and "have-nots." In the Chicago metro area, upper income college graduates are 10 times more likely to be capable of using computers, modems and the Internet than lower income groups without a high school degree. The upper income/well educated group has access to these tools at work and in their homes. The lower income/less educated group relies upon access in schools and libraries, public institutions. So the effective disparity in access/hours may be a multiple of 50 or 100. This is a dangerous disparity in the effective use of a tool that will be a necessity in the 21st Century.

There are groups attending these oral arguments who represent the real people who will be benefited by these programs, residents of HUD and public housing, families living in neighborhoods without jobs, single parent households looking for the skills to earn a living wage, seniors wanting to share email with their children and grandchildren, high school dropouts looking for technology skills, block clubs wanting to support neighborhood safety programs, and the various types of neighborhood learning, employment and business incubation networks that could transform the quality of life in inner city neighborhoods throughout the State. These groups ought to be brought in to share the benefits of the digital economy and advanced telecom services.

Our proposed Illinois Community Technology Fund is a series of programs designed to promote necessary workforce skills, economic development and social capital in inner city neighborhoods throughout the State, and to create informed customers for telecom service providers. It is what is required – at a minimum – if the Commission is to find that the proposed merger will not have an adverse affect on disadvantaged and underserved markets.

Preparing and Aggregating the Market.

The first of the Fund programs is designed to help underserved markets understand the benefits, to them, of learning to use, and using, telecom products and services. There are two parts to this initiative. One is to gather experiences from around the country and world – in effect "best practices" – about the ways in which various disadvantaged markets have learned to use telecom products and services to improve their lives. The second involves the creation of communication strategies so that the benefits of advanced telecom skills can be made relevant to the markets that could benefit from them. This will involve print and electronic media, cable, the briefing of community based organizations, forums, billboards, public service announcements, editorials, a bookmobile-like "cyber bus," web sites, email and listservers. The objective is to "get out the word" to disadvantaged markets in the most efficient, professional and cost-effective manner. The goal is to create informed, customer "demand."

Funding Public Technology Initiatives.

The objective of this program is to develop public technology initiatives for underserved markets that work, are replicable and are cost-effective. There are two working models for this initiative. The first is the Department of Commerce TIIAP program that has funded over 500 innovative and replicable public technology initiatives during the past five years. These are all programs that demonstrate how information and communication technologies can be used to promote education, skills building, public health, safety, community development and other public interest initiatives.

The second is the program developed in California as part of the SBC/Pac Tel merger. This was a program to support public technology initiatives in disadvantaged and underserved markets throughout California. One of the important insights in this program was to use neighborhood and community organizations to both communicate and implement this strategy, groups like those in this room who are supporting our position in this proceeding. The program requires that these organizations identify, represent and communicate with the groups that are their intended beneficiaries. It also requires community involvement, collaboration and strategies for communicating the "lessons learned" from the funded experiences.

Community Technology Centers.

The third program involves the creation and initial funding for community technology centers. Ameritech has developed a model for such a program in Ohio. This statewide program was initiated in 1995 as part of a rate charge settlement decision. It provided multi-year funding for an inter-connected group of community technology centers around the state. As part of the recent Ameritech/SBC settlement in Ohio, the Joint Applicants have agreed to provide additional financing for this program. SBC has been involved in the development of a similar community technology center program in Missouri. These centers are in inner city markets, and are connected to colleges and other job training centers.

While Ameritech and SBC both already have experience with community technology centers, we recommend that these experiences be carefully reviewed, along with the experiences of the more than 300 affiliates in the Community Technology Center Network funded by the National Science Foundation, as well as the 500 computer learning centers created in HUD housing under the HUD Neighborhood Networks program.

There are programs of this type working right now in Chicago: at the Erie Neighborhood House, at the various locations of Street Level Youth Media, at Senior Net sites, at Northwest Tower, at the CHA elderly building at Devon and Sheridan, at the James Jordan Boys and Girls Club, at the Charles Hayes Family Investment Center, at an IIT site managed by the Chicago Urban

League and at a variety of churches, housing developments, after-school and pre-school programs throughout the city. However, this is simply the top of an iceberg of need. There is a need for more programs like this in Chicago and in every other city in Illinois.

Creating a Company to Commercialize Public Technology Initiatives.

In each of the program areas to be developed within the Illinois Community Technology Fund – preparing the market, public technology initiatives, and community technology centers – we recommend that efforts be made to gather existing experience on the benefits of these programs to various market segments – "best practices" – so that everyone can understand the value of being a customer of information and communication technology skill products.

In the Pacific Telesis merger, Pac Tel/SBC agreed to create four subsidiary companies to be headquartered in California. We propose that a subsidiary be created in Illinois to gather and commercialize the experiences gained in serving disadvantaged communities in the U.S. and around the world. There are very substantial numbers of "disconnected" populations throughout this country and abroad that could benefit from the market research, products, and services that will be developed in serving the disadvantaged and underserved markets of Illinois. There is a business opportunity here. Illinois ought to be the home of the business strategy that designs and implements a strategy to respond to this market opportunity.

Summary of Position:

This is our position in these merger proceedings. We WOULD LIKE to be able to support this merger. Our markets are currently being served by a monopoly. There is no competition today for the customer markets we represent. The alt/reg price cap plan is simply a fixed price contract negotiated with a monopoly. Our markets are not going to benefit from a one supplier system. We need a marketplace where there are multiple suppliers competing for our business. We believe this merger could be approved with conditions that would significantly improve competition in our markets. But not on the record before the Commission at this time.

First, we don't believe the Commission has been provided with sufficient information, in clear and understandable terms, to enable the Commission to decide whether an appropriate Illinois version of a Section 271 "open markets" checklist could be structured to meet the legitimate competition concerns of the various Intervenors and the Commission OR to be comfortable with the quality of information or analysis on the nature, timing or amounts of savings that will result from this combination of companies.

Second, we recommend that appropriate questions on savings and an Illinois version of the Section 271 checklist be prepared for the Joint Applicants, that they be given appropriate time to respond fully to the questions, and that the Commission decision deadlines be extended as provided for in Section 7-204(d).

Third, the Joint Applicants have not met their burden of proof that the proposed merger will not have a likely "adverse effect" on rates, services and competition for the disadvantaged markets that we represent. They have offered NO evidence. Therefore, the Commission can NOT make the necessary findings under Section 7-204.

Finally, we believe, the Joint Applicants, with proper motivation, could meet this burden; a. if they were to comply with an appropriately structured Illinois 271 compliance program to the satisfaction of the ICC; b. AND if they were to provide a combination of discounts and technical assistance to CLECs interested in providing the special service needs of our markets; and c. IF they were to provide meaningful savings in this merger to be used in part to fund the market building remediation programs we have recommended in the proposed Illinois Community Technology Fund.

Unless the Commission were to offer, and the Joint Applicants were to accept, the opportunity to use Section 7-204(d) to provide additional and meaningful information on savings, Section 271 compliance procedures, and ways that disadvantaged markets could benefit from this merger, there is no responsible alternative for the Commission but to reject this proposed merger.